

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO GONZALES,

Plaintiff,

v.

UNITED STATES, et al.,

Defendants.

No. 1:21-cv-01053-ADA-CDB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS CASE
FOR FAILURE TO STATE A CLAIM,
FAILURE TO COMPLY WITH A COURT
ORDER, AND FAILURE TO PROSECUTE

(ECF No. 15)

Plaintiff Antonio Gonzales is a federal prisoner proceeding pro se and in forma pauperis in this action filed pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 11, 2022, the Court issued a screening order finding that Plaintiff's complaint failed to state a claim upon which relief can be granted. (ECF No. 11.) The Court ordered Plaintiff to file a first amended complaint within thirty days and warned, "If Plaintiff fails to comply with this order, the Court will recommend that this action be dismissed for failure to state a claim, failure to prosecute, and failure to obey a court order." (*Id.* at 11.)

When Plaintiff failed to file an amended complaint, the Magistrate Judge issued an order to show cause within twenty-one days as to why the Court should not dismiss his case. (ECF No. 14.) Again, the Magistrate Judge warned, "Failure to comply with this order will result in a

1 recommendation that this case be dismissed for failure to state a claim, failure to prosecute, and to
2 obey a court order.” (*Id.*)

3 Plaintiff did not respond to the order to show cause. On January 11, 2023, the Magistrate
4 Judge issued findings and recommendations recommending dismissal of the action for failure to
5 state a claim, failure to comply with a court order, and failure to prosecute. (ECF No. 15.) The
6 findings and recommendations contained notice that Plaintiff had fourteen days within which to
7 file objections.

8 Both the order to show cause and findings and recommendations were returned to the
9 Court as undeliverable, on January 17, 2023 and February 2, 2023 respectively. The Local Rules
10 place a continuing duty on pro se parties to notify the Court of any change of address. E.D. Cal.
11 R. 182(f). “Absent such notice, service of documents at the prior address of the . . . pro se party
12 shall be fully effective.” *Id.* Additionally, “[i]f mail directed to a plaintiff in propria persona by
13 the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and
14 opposing parties within sixty-three (63) days thereafter of a current address, the Court may
15 dismiss the action without prejudice for failure to prosecute.” *Id.* 183(b).

16 More than sixty-three days have passed since the Magistrate Judge’s order to show cause
17 was returned to the Court as undeliverable. Plaintiff has not communicated with the Court since
18 February 2, 2022.

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
20 de novo review of this case. Having carefully reviewed the entire file, the Court finds the
21 findings and recommendations to be supported by the record and proper analysis.

22 Accordingly,

- 23 1. The findings and recommendations issued on January 11, 2023, (ECF No. 15), are
24 adopted, in full;
- 25 2. The action is dismissed, with prejudice, for failure to state a claim, failure to
26 prosecute, and failure to obey a court order;
- 27 3. The findings and recommendations issued on November 14, 2022 are terminated
28 as moot; and

- 1 4. The Clerk of Court is directed to terminate all pending motions and deadlines and
2 to close the case.

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4
5 IT IS SO ORDERED.

6 Dated: March 31, 2023


UNITED STATES DISTRICT JUDGE